IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIATION NO.1481/06

Shri.Rajendra Muka Devendra .... Applicant

V/s.

The State of Maharashtra .... Respondent

Shri.R.S. Deshpande Adv. for the applicant.
Miss. Rajeshree M. Gadhvi APP for the State.

CORAM : V.M. KANADE, J.

DATED : 02/05/06

P.C.:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant was arrested on 21st July, 2005 in connection with C.R.No.135/05 registered with Faraskhana Police Station, Pune for the offences punishable U/s.302, 323, 504, 506 r/w 34 of IPC. The applicant is in jail since then.

3. It is alleged that the deceased Bajrang assaulted the applicant and therefore, the applicant and his son Rajesh gave fist and kick blows on the

forehead and other parts of body of Bajrang. At that time the applicant took out sickle which was in his pant and gave to his younger son Rajesh and told him to assault Bajrang and therefore, at the instigation of applicant, his son Rajesh gave blow of sickle on the head and another blow on abdomen of deceased Bajrang, as a result of which Bajrang succumbed to injuries. The applicant's son was released on bail since he was Juvenile.

4. Learned Counsel for the applicant submitted that incident in question happened on the spur of moment and since investigation is over, the applicant may be released on bail.

5. Learned APP for the State on the other vehemently opposed the application for grant of bail. She submitted that at the instigation of the applicant, his younger son assaulted deceased and had given sickle which was in his pant to his younger son. She submitted, therefore, the provision of Sec.34 is attracted.

6. It is not true that in the statement of complainant and other witnesses prima facie, it does

appear that applicant instigated his younger son though he had not personally given blow with the sickle to the deceased. However, since chargesheet has been filed and the applicant is in jail since last nine months, in my view, the applicant is entitled to be released on bail subject to stringent conditions being imposed by this court. It is a admitted position that this is a first case of the applicant and he is not a harden criminal.

7. Under this circumstance, the applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount. One of the sureties shall be local surety. The applicant shall not enter the jurisdiction of Pune City and shall gave his new address to the Superintendent of Jail before he is released and shall report to the nearest police station from the new address.

8. The applicant shall not tamper with the evidence or threaten the witnesses. If any complaint is received by the Investigating Officer, the Public Prosecutor is at liberty to file an application for cancellation of bail.

9. The Trial Court shall not be influenced by any observations made by this Court while deciding the application and it shall not be construed as an expression of opinion on merits of the case and it shall decide the case on its own merit and in accordance with law.

10. The application is accordingly disposed of.

V.M. KANADE J.